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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,267	02/13/2004	Robert A. Elick	RAC001-210	5428

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EXAMINER
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EL ARINI, ZEINAB

ART UNIT	PAPER NUMBER
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1746

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/777,267

**Applicant(s)**

ELICK ET AL.

**Examiner**

Zeinab E. EL-Arini

**Art Unit**

1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/13/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claims 1-15, drawn to a method of performing a washing operation in a dishwasher, classified in class 134, subclass 18.
- II. Claims 16-20, drawn to a dishwasher, classified in class 134, subclass 172.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the process as claimed can be practiced by another dishwasher such as one without a door pivotally mounted to the tub as claimed.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mr. Whitelaw on 03/01/05 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-15. Affirmation of this election must be made by applicant in replying to this Office action. Claims 16-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 2, 8-9, and 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 2, 9, 15, line 1, claims 8, 14, line 2, "the step" lacks antecedent basis.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Springer (5,494,062).

Springer discloses a method of washing dishes in a dishwasher. The reference discloses the steps of operating the wash pump to circulate the

wash water in the dishwasher, after about 60 seconds the pump has been deenergized for about 1 second, then operation of the wash pump continues for about 60 seconds, and repeating the steps as claimed. See col. 1, lines 53-64, col. 3, lines 8-33, col. 4, lines 34-45, and lines 52-67.

Dislodging food and soil particles clinging to internal surfaces of the washing chamber, spraying a front lip of the tub, and the lower corner portions of the tub is inherent in any washing operation in a dishwasher, since Springer discloses the pump assembly which direct the washing fluid as claimed.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Milocco et al. (5,525,161).

Milocco et al. disclose a method of performing a washing operation in a dishwasher comprising filling a washing chamber with a washing fluid to a first level; initiating operation of a pump assembly to direct the washing fluid from within the washing chamber to at least one spray arm while causing the washing fluid to fall to a second level in the dishwasher; spraying jets of washing fluid from at least one spray arm onto kitchenware being washed in the dishwasher; and pausing operation of the pump assembly (causing

the washing fluid to rise to the first level); re-initiating operation of the pump assembly after pausing the pump assembly (varying the trajectories of the jets of washing fluid; and repeating the initiating, causing and varying steps as claimed. See col. 2, line 46-col. 4, line 55, col. 5, lines 9-26, col. 6, lines 37-67, and claims 1-5. Dislodging food and soil particles clinging to internal surfaces of the washing chamber, spraying a front lip of the tub, and the lower corner portions of the tub is inherent in any washing operation in a dishwasher, since the reference discloses the pump assembly which direct the washing fluid as claimed.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Rappette ( 20040045586).

Rappette discloses a method of washing dishes in a dishwasher having a wash pump for recirculating wash water within the dishwasher during a wash segment having a start stop start sequence comprising the steps of: operating the wash pump to circulate wash water in the dishwasher; pausing the operation of the wash pump to allow wash

to flow back into the wash pump; operating the wash pump to circulate wash water in the dishwasher for a short period of time; and repeating the steps of pausing and operating the wash pump for a short period of time to provide said stop start sequence in order to provide a plurality of surges of wash water in the dishwasher upon start up of the wash pump to improve removal of food particles from dishes being washed. See the abstract, the claims, and the document in general. Dislodging food and soil particles clinging to internal surfaces of the washing chamber, spraying a front lip of the tub, and the lower corner portions of the tub is inherent in any washing operation in a dishwasher, since the reference discloses the pump assembly which direct the washing fluid as claimed.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyman (GB 2221384).



Wyman discloses a method of performing a washing operation in a dishwasher comprising directing several jets of liquid onto the soiled surfaces of articles stacked within an enclosure; periodically varying the strength of the jets, and thus the force exerted by the jets as they impinge on the soiled surfaces, between a high strength sufficient to displace loosened particles from the soiled surfaces, and lower strength sufficient to maintain a flow of the liquid over the soiled surface to soak them. See the claims, and the document in general.

The reference does not teach the steps of performing as claimed.

It would have been obvious at the time applicant invented the claimed process to use the process taught by Wyman to obtain the claimed process. This is because the process as claimed is functionally equivalent to the process taught by Wyman. This is also because the filling, initiating, spraying front lip of the tub, and the lower corner portions of the tub and the varying steps are inherent in Wyman process. Dislodging food and soil particles clinging to internal surfaces of the washing chamber, spraying a front lip of the tub, and the lower corner portions of the tub is inherent in

any washing operation in a dishwasher, since the reference discloses the pump assembly which direct the washing fluid as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zeinab E. EL-Arini whose telephone number is (571) 272-1301. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on (571) 272-1414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Zeinab E. EL-Arini*  
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Primary Examiner  
Art Unit 1746

ZEE  
03/03/05